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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 181

JENNIE E. DARGEL, et al., *Petitioners*

v.

WILLIAM G. BARR, Director of Rent Stabilization, et al.

On Petition for a Writ of Certiorari to the United States Emergency Court of Appeals

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MEMORANDUM SUGGESTING MOOTNESS

OPINION BELOW

The opinion of the United States Emergency Court of Appeals is reported at 204 F. 2d 697.

JURISDICTION

The judgment of the United States Emergency Court of Appeals was entered on May 12, 1953 (R. 133). On June 15, 1953, a petition for re-

hearing was denied (R. 134). The petition for a writ of certiorari was filed on July 15, 1953. The jurisdiction of this Court is invoked under 50 U.S.C. App., Supp. V, 1894 and 50 U.S.C. App., Supp. V, 2107-2108.

QUESTION PRESENTED

Whether the issues sought to be raised concerning Certificates Relating to Eviction permitting the petitioners' landlord to proceed at local law to obtain their eviction, are moot by reason of termination of Federal rent controls in the subject area.[1]

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the Housing and Rent Act of 1947, as amended, Rent Regulation 1—Housing and Rent Procedural Regulation 3, are set forth in the Appendix, *infra,* pp. 6-12.

STATEMENT

Petitioners were tenants in an apartment building in the Chicago (Illinois) Defense-Rental Area (R. 1). Certificates Relating to Eviction,[2] permitting the landlord to proceed at local law to recover possession, were issued for the apartments

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[1] This is not the question raised by petitioners, who challenge the action of the respondent in granting a certificate relating to eviction on the facts of this case.

[2] Rent Regulation 1—Housing, Sections 181, 191, 193, App., *infra,* pp. 9-10.

then occupied by the petitioners [3] on the ground that the landlord desired possession for the purpose of immediately altering or remodeling the apartments for continued use as housing accommodations in a manner which could not practicably be done with the tenants in possession. The petitioners filed a protest [4] alleging, in main, that the landlord's petitions were not filed in good faith for the reason that they had been preceded by overcharges, decreases in services, and threats of eviction if complaint were made to Federal rent control officials (R. 22-25). The protest was denied upon the finding that the landlord had demonstrated the necessary facts and was proceeding in good faith (R. 102). In a unanimous decision the court below, after consideration of the record, held that the question before the Director was one of fact; that it was his duty to consider the circumstances, to determine credibility and to weigh the evidence; and that the Director's order was sustained by the evidence on the record viewed as a whole.

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[3] Since issuance of the certificates several of the subject apartments have been vacated (Pet. 3-4).

[4] 50 U.S.C. App., Supp. V, 1894; 50 U.S.C. App., Supp. V, 2107.

ARGUMENT

The case presents merely a factual question of no general importance which clearly does not warrant review by this Court. This appears plainly from the petition for certiorari itself and from the opinion below (R. 127-132).

In any event, since the filing of the petition, additional facts have come into being which show that the case is moot. On July 31, 1953, the provisions of the Housing and Rent Act of 1947, as amended (50 U.S.C. App., Supp. V, 1894) terminated in the Chicago Defense-Rental Area for the reason that the area had not been certified as a critical defense housing area. The effect of eviction certificates before the termination of rent control was to permit evictions. Since termination, no certificate is necessary. The controversy as to the validity of the certificates thus has no consequence at the present time. Nor does the past status of the certificates affect rights and liabilities protected by the saving clause. By reason of administrative review proceedings and successive appeals, the certificates have been stayed since their issuance on May 13, 1952[5] (R. 22, 104), and petitioners were not evicted. Since there is no longer any controversy, the case has become moot. *Talbot* v. *Woods,* 164 F. 2d 493 (E.C.A. 1947); *Pemberton Gardens, Inc.* v. *Sherrard,* E.C.A. No.

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[5] Rent Procedural Regulation 3, Section 26, *infra,* App. pp. 10-12, provides for a stay of such certificates during administrative review proceedings if filed within the time allowed and pending review by the United States Emergency Court of Appeals and by this Court.

656, complaint dismissed on motion, July 16, 1953, on the authority of *Talbot* v. *Woods, supra.*

Respectfully submitted,

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Acting Solicitor General.

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Office of Defense Mobilization.

August, 1953

APPENDIX

The pertinent provisions of the Housing and Rent Act of 1947, 61 Stat. 193, as amended (50 U.S.C. App., Supp. V, 1894, as amended by the Act of June 30, 1952, 66 Stat. 296, 306, the Act of July 15, 1952, 66 Stat. 637, 657, and by Public Law 23, 83rd Cong., 1st Sess.) provide as follows:

Section 204

(f) (1) The provisions of this title shall cease to be in effect at the close of September 30, 1952, except that they shall cease to be in effect at the close of April 30, 1953—

(A) in any area which prior to or subsequent to September 30, 1952, is certified under subsection (1) of section 204 of this Act as a critical defense housing area;

(B) in any incorporated city, town, village, or unincorporated area of any county which, at a time when maximum rents under this title are in effect therein, and prior to September 30, 1952, declares (by resolution of its governing body adopted for that purpose, or by popular referendum in accordance with local law) that a substantial shortage of housing accommodations exists which requires the continuance of Federal rent control in such city, town, village, or unincorporated area; and

(C) in any unincorporated locality in a defense-rental area in which one or more incorporated cities, towns, or villages constituting the major portion of the defense-

rental area have made the declaration specified in subparagraph (B) at a time when maximum rents under this title were in effect in such unincorporated locality.

* * * * * * * *

(3) Notwithstanding any provision of paragraph (5) of this subsection, the provisions of this title shall cease to be in effect upon the date of a proclamation by the President or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this title is not necessary because of the existence of an emergency, whichever date is the earlier.

(4) Notwithstanding any provision of paragraph (3) or (5) of this subsection, the provisions of this title and regulations, orders, and requirements thereunder shall be treated as still remaining in force for the purpose of sustaining any proper suit or action with respect to any right or liability incurred prior to the termination date specified in such paragraph.

(5) (A) Notwithstanding any provision of paragraph (1) of this subsection—

(i) the provisions of this title shall cease to be in effect at the close of July 31, 1953, in the areas described in subparagraph (1) (B) and (C) of this subsection in which maximum rents were in effect on April 30, 1953; and

(ii) the provisions of this title shall cease to be in effect at the close of April 30, 1954, in any area which has been or is certified under subsection (l) of this section as a critical defense housing area.

(B) Any such area which was certified as a critical defense housing area prior to the date of enactment of the Housing and Rent Act of 1953 shall be reviewed by the President in the light of the new criteria applicable to critical defense housing areas and shall be continued under control after such review (which must be concluded by July 31, 1953), only if, after such review and prior to such date, the President determines that such area meets the requirements for certification under section 204 (l) as amended by such Act, and publishes in the Federal Register notice that such determination has been made.

* * * * * * * *

(r) Regulations or orders under this title shall be subject to the same proceedings for protest and review as are provided for regulations or orders relating to price controls by sections 407 and 408 of the Defense Production Act of 1950, as amended, and for such purpose such sections are hereby continued notwithstanding the provisions of section 717 of the Defense Production Act of 1950, as amended.

The pertinent provisions of Rent Regulation 1 —Housing (16 F.R. 12879, re-issued 18 F.R. 1266) provide as follows:

6—Removal of Tenant

GROUNDS

Sec. 181. *Restrictions on removal of tenant.* So long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodations by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired, or otherwise terminated, and regardless of any contract, lease, agreement or obligation heretofore or hereafter entered into which provides for surrender of possession or for entry of judgment upon the tenant's confession for breach of the covenants thereof, or which otherwise provides contrary to sections 181 to 206, unless the housing accommodations are registered as required by this regulation and except on one or more of the grounds specified in sections 182 to 186 or unless a certificate has been issued as provided in sections 191 to 196.

* * * * * * * *

EVICTION CERTIFICATE

Sec. 191. *Eviction certificate; evictions not inconsistent with regulation.* No tenant shall be removed or evicted on grounds other than those stated in sections 181 to 186 of this section or other than for nonpayment of rent unless on petition of the landlord the Director

certifies that an eviction of the character proposed is not inconsistent with the purposes of the act or this regulation and would not be likely to result in the circumvention or evasion thereof. Where the housing accommodations are registered as required by this regulation, the Director shall so certify for the purposes set forth in sections 192 to 196.

* * * * * * * *

SEC. 193. *Alterations or remodeling.* Where a landlord seeks in good faith to recover possession for the immediate purpose of substantially altering or remodeling the housing accommodations and such alterations or remodeling (a) is for the purpose of creating additional housing accommodations of the type recognized as self-contained family dwelling units in the neighborhood in which they are located or (b) is to substantially improve such accommodations for continued use as housing accommodations or is reasonably necessary to protect and conserve the housing accommodations: *Provided,* That the landlord has obtained such approval for the proposed alterations or remodeling as may be required by Federal, State, and local law: *And provided further,* That such alterations or remodeling cannot practicably be done with the tenant in occupancy.

The pertinent provisions of Rent Procedural Regulation 3 (17 F.R. 6091) provide as follows:

SEC. 26. *Stay of certificates relating to eviction.* (a) Where a tenant files a protest from

an order with respect to a certificate relating to his eviction within twenty (20) days after date of its issuance, the certificate shall be stayed until thirty (30) days after determination of the protest: *Provided, however,* That the waiting period, if any, provided by the certificate shall not be tolled by the stay and that the termination or expiration of a stay shall not operate to curtail such waiting period: *And provided, further,* That where the tenant's protest or objections are dilatory, frivolous, or not made in good faith, the stay of the certificate may be terminated.

(b) If the tenant files a complaint against the order in the United States Emergency Court of Appeals in accordance with law, the certificate shall be deemed suspended until entry of the final judgment of that Court and for a period of thirty (30) days thereafter. If within that period the tenant files a petition for certiorari to review such judgment in the Supreme Court of the United States, the certificate shall be deemed suspended until ultimate disposition of the proceeding. Where, pursuant to a judgment of that Court or of the Emergency Court of Appeals the proceeding is remanded to the Director, the certificate shall remain suspended during the further proceedings before the Director.

(c) Where the certificate relating to eviction is in suspension and where, upon complaint filed by the landlord in the Emergency Court of Appeals pursuant to law against an order involving such certificate, the determi-

nation complained of is set aside in whole or in part, or the proceedings remanded to the Director, the certificate shall be deemed suspended in the same manner provided for in paragraph (b) of this section as if the tenant had been the complainant.

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